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The test enunciated in the principal case was drawn from *Attorney-General* v. *Hitchcock,* 1 Exch. 91, and according to WIGMORE, EVIDENCE, § 1020, "is expressly accepted in only a few of the United States." Kansas seems firmly wedded to this test of collateralness, however, since not only in the present but also in a previous case, *State* v. *Sweeney,* 75 Kan. 265, it has been adopted and acted upon. *Attorney-General* v. *Hitchcock,* supra, in conjunction with other cases upon this subject, is carefully reviewed and considered in *Williams* v. *State,* 73 Miss. 820.

HOMICIDE—SELF-DEFENSE—DUTY TO RETREAT.—The defendant was convicted of murdering his wife. The evidence showed that the killing took place in defendant's house, which was occupied by himself and wife. The judge instructed the jury, in effect, that before the defendant could establish self-defense he must show that there was no convenient or reasonable mode of escape open to him by retreating, unless by retreating he increased his danger. *Held,* this instruction was erroneous. *Watts* v. *State* (Ala. 1912) 59 South. 270.

"It is an admitted doctrine of our criminal jurisprudence, that when a person is attacked in his own house, he is not required to retreat further." *Jones* v. *State,* 76 Ala. 8; *Peo.* v. *Lewis,* 117 Cal. 186; 1 HALE, P. C., 486; *Peo.* v. *Newcomer,* 118 Cal. 263; 21 CYC. 823. As the court said in the principal case, this rule is "of ancient origin, and indeed is deeply rooted in the elemental instincts of humanity. In its original applications it doubtless had in view only attacks from external aggressors." But the court had previously applied the rule in a case where deceased and defendant were tenants in common, *Jones* v. *State, supra;* and also in a case where deceased and defendant were husband and wife,—*Hutchinson* v. *State,* 170 Ala. 29. In the latter case the court said, "There must be somewhere a person may stop and defend himself or herself, when they have the right otherwise to do so. The fact that two may live in the same house, have the same dwelling or place of business, does not take away from either in favor of the other the right to stop there and defend himself." The principal case is illustrative of what seems to be the modern tendency in regard to the duty to retreat in general. As was said in *Runyon* v. *State,* 57 Ind. 80, "The tendency of the American mind seems to be very strongly against the enforcement of any rule which requires a person to flee when assailed." See RICE, EVIDENCE, § 360; *Beard* v. *U. S.,* 158 U. S. 550.

INSURANCE—DELIVERY OF MUTUAL BENEFIT CERTIFICATES.—An insurance contract of a fraternal order provided that the benefit certificate "shall not become effective until delivered by the camp clerk to the applicant while in good health." The applicant paid the advance assessments, was initiated and performed all other conditions precedent. Under these circumstances, while the member was in good health, the Benefit certificate was received by the local clerk. A few days later the member was fatally injured, but before his death the certificate was delivered to his son. *Held,* delivery to the clerk was delivery to the member, and a delivery into the actual possession of the

insured while in good health was unnecessary. *Lathrop* v. *Modern Woodmen of America* (Or. 1912) 126 Pac. 1002, overruling dicta to the contrary in the same case in 56 Or. 440, 106 Pac. 328, 109 Pac. 81.

The determination of the exact moment when a contract of a mutual benefit company becomes binding is often a serious practical problem in view of the conditions as to delivery found in the modern contract. Formerly, when no conditions appeared at all, if the risk had been accepted by the Head Lodge, the liability was fixed, even if the member died before the benefit certificate was issued. *Bishop* v. *Grand Lodge,* 112 N. Y. 627. While the terms of modern conditions vary greatly, the principal case seems to lay down the true rule, viz.: that these provisions are to assure the parties that the certificate will be delivered through the proper channels, hence if the insured is in good health and has signified his acceptance either expressly or impliedly and has done everything necessary to entitle him to the possession of the certificate, the receipt of the certificate by the local officer will be considered as a delivery to the member. *Lorscher* v. *Sup. Lodge,* 72 Mich. 316; *Wagner* v. *Sup. Lodge,* 128 Mich. 660; *Baldwin* v. *Golden Star Fraternity,* 47 N. J. L. 111; *Pledger* v. *Sov. Camp,* 17 Tex. Civ. App. 18; *O'Neal* v. *Sov. Camp,* 130 Ky. 68. This holds true even when the contract expressly states that such provisions are conditions precedent, *Sov. Camp.* v. *Brown* (Tex. 1905) 88 S. W. 372; *Sov. Camp* v. *Dees,* 45 Tex. Civ. App. 318. It has even been held that the condition that the member shall be in good health can be waived by the local clerk, *Sov. Camp* v. *Carrington,* 41 Tex. Civ. App. 29, 90 S. W. 921. Such conditions have no application to charter members of the local organizations, *Tracy* v. *Sup. Court of Honor* (Neb. 1903) 93 N. W. 702; affirmed; 96 N. W. 1007. Another line of cases not always clearly distinguished in the decisions from the above cases, but which plainly belong in a different class, are those where some condition precedent is unperformed such as the payment of advance assessments, *Wilcox* v. *Sov Camp,* 76 Mo. App. 573; *Nat'l Asso.* v. *Bratcher,* 65 Neb. 378; *Mich. Mut. Life Ins. Co.* v. *Thompson,* 44 Ind. App. 180, 86 N. E. 503; or initiation, *McWilliams* v. *M. W. A.* (Tex. Civ. App. 1911) 142 S. W. 641; *Loyd* v. *M. W. A.* 113 Mo. App. 19, 87 S. W. 530; *Louden* v. *M. B. of A.,* 107 Minn. 12, 119 N. W. 425; or sickness of the member before the Benefit Certificate was issued by the Head Lodge, *Roblee* v. *Masonic Life Asso.,* 77 N. Y. Suppl. 1098; *Alexander* v. *M. O. W.,* 161 Ala. 561, 49 So. 883; *Mich. Mut. Life Ins. Co.* v. *Thompson, supra; McLendon* v. *W. O. W.,* 106 Tenn. 695, 52 L. R. A. 444. In these latter cases the insurer never became subject to liability.

INTERSTATE COMMERCE—LIABILITY OF INITIAL CARRIER FOR DESTRUCTION OF GOODS IN WAREHOUSE.—Plaintiff company shipped goods by defendant carrier from Paducah, Kentucky, to DeSoto, Georgia, consigned "Our order, notify R E. Howe." Defendant carried the goods to the end of its line and delivered them to the S. Ry. Co., which carried them to DeSoto, placed them in its freight warehouse there November 4, and promptly notified R. E. Howe of their arrival. Howe refused to receive them. No notice of this was given to plaintiff company, and on November 26, the warehouse and its contents